

Health and Medical Care Foundation d/b/a Pomona Golden Age Convalescent Home and Hospital and Service Employees Union, Local 399, SEIU AFL-CIO, CLC, Petitioner. Case 21-RC-16897

December 16, 1982

### DECISION ON REVIEW AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On March 25, 1982, the Regional Director for Region 21 issued a Decision and Order in the above-captioned proceeding in which he found that only an employerwide unit of employees at its nine convalescent home facilities is appropriate, rejecting as inappropriate the Petitioner's request for a unit confined to the Employer's Pomona, California, facility, or, in the alternative, a cluster of three of its facilities at Pomona, San Dimas, and Baldwin Park, California; and he dismissed the petition as the Petitioner indicated that it did not desire to proceed to an election in any broader unit. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's decision on the grounds that he made clearly erroneous findings of fact and departed from precedent. The Employer filed an opposition thereto.

By telegraphic order dated May 14, 1982, the National Labor Relations Board granted the Petitioner's request for review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer is a nonprofit California corporation engaged in the operation of nine convalescent homes in southern California, eight of which—Lomita, Baldwin Park (also known as Tri-City), Bellflower, El Monte, Pasadena, Pico-Downey, San Dimas, and Pomona—are in the greater Los Angeles metropolitan area and a ninth, Vista, is approximately 100 miles south of Los Angeles. In its primary unit request the Petitioner seeks to represent approximately 43 employees at Pomona employed as nurses aides, licensed vocational nurses, medical records clerks, and housekeeping, food service, social service, maintenance, and laundry

employees.<sup>1</sup> The Employer contends that the only appropriate unit consists of the approximately 600 employees in these classifications in all 9 homes. There is no history of collective bargaining among the employees involved.

The Employer has a central office in Cerritos, California. According to the Employer's organizational chart, the management hierarchy consists of a board of trustees, a president, a vice president, and a director of operations. Below these individuals are nine home administrators, one at each of the homes. A nursing coordinator, a bookkeeping field supervisor, and a maintenance supervisor are located at the central office.

Administrative services, e.g., recordkeeping and payroll preparation for all facilities, are handled at the central office. Food is purchased and stored centrally. All employees receive an employee handbook which sets forth the Employer's uniform policies regarding, *inter alia*, fringe benefits, discipline, probationary periods, and discharge. Uniform safety and drug-usage programs are administered employerwide. Occasional meetings of home administrators are held centrally; directors of nursing, bookkeepers, medical records personnel, and food service employees also meet centrally because there are so few individuals in each of these classifications at any one facility. Other unit employees attend staff meetings at their respective facilities. Training of supervisors is conducted centrally; training of unit employees is handled locally by a staff developer employed at each facility. On one occasion, prior to the hiring of the staff developer at the Pomona facility, Pomona employees were sent to San Dimas for training; on another occasion, Bellflower employees were trained at Pico-Downey.

The director of operations, who has served as an acting home administrator at times, formulates the Employer's budget, makes decisions regarding layoff and recall, and generally oversees the operation of the nine facilities. He regularly visits each facility to talk with the home administrator, director of nursing, and other supervisors and may, while there, check an employee's file or review hirings and firings. The nursing coordinator, the bookkeeping field supervisor, and the Employer's attorney,<sup>2</sup> also visit the homes on a regular basis

<sup>1</sup> At the hearing the parties entered into a stipulation as to the composition of the unit.

<sup>2</sup> The Employer's attorney is employed by the management services company with which the Employer contracts for legal and accounting services. Prior to his employment with the management services company, he served as the director of operations when the Employer took over operation of the homes in 1971, and, as a result, is very familiar with the operation of the homes.

and may, during such visits, discuss personal or personnel problems with employees. There is, however, no evidence in the record regarding how frequently such visits occur.

The home administrator for each facility makes decisions to hire, discharge, promote, or transfer unit employees at his/her facility, subject to review by the central office. Advertising of vacancies is usually handled locally by the home administrator; posting vacancies takes place only at the facility where the vacancy exists. Interviewing of applicants is normally conducted by the home administrator; on one occasion, however, the director of operations interviewed an applicant for a unit position. When setting the starting wages of new employees, home administrators have authority to deviate by as much as 25 cents from guidelines established by the Employer, subject to the approval of the director of operations.

Immediate supervisors at the separate facilities possess and exercise authority to discharge employees for a variety of reasons, as specified in the employee handbook. The director of operations reviews such actions, and he could not recall ever having reversed a supervisor's discharge of an employee for one of the specified reasons. In addition to evaluating unit employees, immediate supervisors make recommendations to the home administrator regarding increases in pay for unit employees—the director of operations can and has rejected such recommendations when budgetary considerations so require. Grievances are processed at the individual facility and are adjusted at that level, but, if they involve pay or workload, the adjustments are subject to review by the central office.

During staff shortages, which occur rather frequently, employees may be asked to work a second shift at another facility or the home administrator may, without the prior approval of the central office, resort to the use of registry personnel. According to the testimony of the director of operations, despite the fact that home administrators have been instructed to avoid the use of registries and to seek volunteers from other facilities, registries are in fact used on a daily basis. He testified that employees were reluctant to accept temporary assignments at other facilities because of problems they encountered in arranging transportation.

In the 12 months prior to the hearing, there were no temporary transfers of Pomona employees to Pasadena, El Monte, Bellflower, Lomita, or Vista. One unit employee from Pomona temporarily transferred to Pico-Downey. One San Dimas employee transferred on a temporary basis to Pomona. Some Pomona employees have worked at Baldwin Park and San Dimas, but the record does

not disclose the number of employees involved in these transfers. Employees can transfer on a permanent basis to another facility but must fill out new application forms at the new facility and be interviewed for the position. Transferees are subject to a 30-day probationary period; new hires are placed on probation for 90 days. During the 6-month period before the hearing, no Pomona employees were given permanent transfers to other facilities. Prior to that 6-month period, two LVNs from Pomona transferred on a permanent basis to San Dimas.

The Regional Director found that the Employer's operation is highly centralized with respect to labor relations, that the separate facilities exhibit little individual autonomy, that there is a substantial degree of employee interchange and similarity of skills and functions, and that all of the homes, with the exception of Vista, are located within close geographical proximity to each other. He concluded, therefore, that the presumptive appropriateness of a single-location unit at Pomona has been rebutted. We disagree. While there are facts which militate in support of a finding that an employerwide unit is appropriate, we conclude that such facts do not require a finding that a unit confined to Pomona employees is inappropriate.

First and foremost, the Pomona facility is geographically separate, the closest of the Employer's other facilities being more than 5 miles away. Although, as above indicated, the Employer's Cerritos office provides centralized administration and purchasing for all nine homes, including uniform labor relations policies, the home administrator at Pomona exercises a substantial degree of authority with regard to day-to-day labor relations matters. Also, the interchange of employees involving the Pomona home is, in our view, insignificant. On the basis of these factors, together with the absence of a bargaining history involving these employees, we conclude, contrary to the Regional Director, that the employees at the Pomona facility share a sufficiently distinct community of interest apart from the broader interest they share with similar employees at the Employer's other facilities to justify a finding that they constitute an appropriate unit for purposes of collective bargaining.

Accordingly, we shall direct an election in the following unit of employees of the Employer, which we find to be appropriate within the meaning of Section 9(b) of the Act:

All nurses' aides, licensed vocational nurses, medical records clerks, housekeeping employees, food service employees, social service employees, maintenance employees and laundry

employees employed at the Employer's Pomona Golden Age Convalescent Home in Pomona, CA, excluding all office clerical employees, registered nurses, professional em-

ployees, supervisors and guards as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]